

Service Date: March 14, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF QWEST)	UTILITY DIVISION
CORPORATION, Public Service)	
Commission Investigation and)	DOCKET NO. D2005.6.105
Direction on Use of Federal)	
Universal Service Funds)	ORDER NO. 6670a

PROTECTIVE ORDER

On February 14, 2006, Qwest Corporation (Qwest) filed before the Public Service Commission (PSC) a motion for protective order to govern certain information expected to be filed in the above-entitled proceeding.

Qwest's motion is proper in form and includes each of the elements required in a motion for protective order before the PSC. Qwest states that it has done a thorough legal and factual examination and has determined the specific items or categories of like items identified are trade secrets or otherwise legally protectible. *ARM 38.2.5007(2)*. Qwest states that it has considered that the PSC is a public agency and that there is a presumption of access to documents and information in the PSC's possession. *ARM 38.2.5007(4)(b)(i)*. Qwest states that it understands it has the burden of demonstrating that the identified items are confidential information and that it must, within its motion, establish a prima facie showing of confidentiality, factually and legally, and make clear the basis for the claim of confidentiality. *ARM 38.2.5007(3)*. Qwest names a contact person regarding the motion and regarding the items to be protected. *ARM 38.2.5007(3)(a)*. Qwest has included a complete and specific non-confidential identification of the items or categories of items for which it seeks protection. *ARM 38.2.5007(3)(b)*. For each item or category of like items Qwest has supplied what Qwest believes is a complete and specific factual basis, including thorough identification and explanation of specific facts, and a complete and specific legal basis and application of the law to facts. *ARM 38.2.5007(3)(c)*. Qwest has included an affidavit that Qwest suggests supports the facts, is by a person qualified on the subject

matter, and supports the claim of confidentiality of the identified information. *ARM 38.2.5007(3)(c)*. Qwest states it has explained, in detail, for each item or category of like items, including thorough facts and legal analysis as it relates in general and in specific, proper application of the element of trade secret. *ARM 38.2.5007(3)(d)*. Qwest's motion has been noticed in accordance with *ARM 38.2.5007(8)*.

Qwest identifies eight categories of information for protection from uncontrolled public disclosure: (1) list of unattended wire centers in Montana; (2) intrastate access revenue detail; (3) number of customers and annual recurring and nonrecurring revenues; (4) digital subscriber line history, number of customers; (5) digital subscriber line capital investment; (6) local network spending by central office 2004; (7) local network spending by central office 2005; and (8) number of digital subscriber line and voice over internet protocol customers in Montana.

The PSC determines that Qwest has shown good and sufficient cause in fact and law that the information for which protection is requested is entitled to protection from uncontrolled public disclosure. Qwest's identified categories are protectible pursuant to § 69-3-105, MCA (PSC authority to issue protective orders), as trade secret or other information that must be protected under law. In accordance with § 30-14-402, MCA (statutory definition of "trade secret"), PSC rule *ARM 38.2.5007(4)(b)* identifies the elements of trade secret as: (a) the items or categories identified are information; (b) the information is in fact secret; (c) the information is subject to efforts reasonable under the circumstances to maintain its secrecy; (d) the information is not readily ascertainable by proper means; and (e) the information derives independent economic value from its secrecy or a competitive advantage is derived from its secrecy. Qwest has made the required demonstration that these elements exist for Qwest's identified categories (1) through (8). Qwest's identified category (1) may have a vague or indirect trade secret basis, but certainly appears to require protection in the interests of public safety as confidential critical infrastructure-security information and be protectible pursuant to § 69-3-105, MCA, as "other information" that must be protected by law, and pursuant to *Great Falls Tribune v. Montana Public Service*

Commission, 319 Mont. 38, 50 (2003), which provides that the right to know does not require disclosure of "confidential proprietary information" protected by law.

The PSC grants Qwest's request for protection of the identified information and hereby orders that information submitted in accordance with this order be treated as "confidential information" under the terms of this order and PSC protective order rules, ARM 38.2.5001 through 38.2.5030.

Done and dated this 28th day of February, 2006, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

BRAD MOLNAR, Vice-Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: There is no reconsideration of the granting of a protective order. There is a procedure to challenge the provider's claim of confidentiality. See ARM 38.2.5008.

Montana Public Service Commission
Protective Orders and Protection of Confidential Information

Nondisclosure Agreement

(7-26-00)

ARM 38.2.5012

Docket No., D2005.6.105, Order No. 6670a
Order Action Date: February 28, 2006

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

Typed or Printed Name

Signature

Date of Signature

Business Address:

Employer

Party Represented